

(FORM)

PUMPING PROTECTION AGREEMENT

PARTIES:

This Pumping Protection Agreement is entered into by and among the Zuni Indian Tribe and its members ("Zuni Tribe"), the United State of America in its capacity as trustee or otherwise acting on behalf of the Zuni Tribe ("United States"), and \_\_\_\_\_ ("Landowner").

RECITALS:

1.1 Certain parties, including the Zuni Tribe and the United States, have entered into a separate comprehensive settlement agreement dated \_\_\_\_\_, 2002 ("Settlement Agreement") to settle and forever resolve various claims of the Zuni Tribe to underground water and surface water in the Little Colorado River basin in the State of Arizona. The complete text of the Settlement Agreement is filed with the Decree Court.

1.2 This Pumping Protection Agreement employs abbreviated terms that have the following meanings:

- A. "AFA" means acre-foot per annum.
- B. "Exempt well" means a well having a pumping capacity of 35 gpm or less. For purposes of determining whether a well is exempt, a series of wells serving the same facility shall be counted as a single well. For purposes of this definition, "facility" means all buildings, equipment, structures and lands served by a common water conveyance system, which buildings, equipment, structures, lands and common water conveyance system are owned and operated by or under common control of the same person, persons, or entity and are located on a single site or on contiguous or adjacent sites, and are operated as a single complex with water used primarily for one purpose.
- C. "Decree Court" means the court with jurisdiction over the judgment and decree entered in accordance with this Settlement Agreement.
- D. "Zuni Protection Area" means the area of land described by that name on Attachment 1, which is incorporated into this Pumping Protection Agreement in its entirety.
- E. "Zuni Pumping Lands" means the area of land described by that name on Attachment 1 (attached and incorporated into this Pumping Protection Agreement).

1.3 The United States owns and holds certain lands in trust for the Zuni Tribe in Apache County, Arizona, referred to as the Zuni Heaven Reservation (see Attachment 1).

1.4 Landowner owns certain lands in Apache County, Arizona ("Landowner's Restricted Lands") that are the subject of this Pumping Protection Agreement, which are more particularly described as follows:

See Attachment 2 (attached and incorporated into this Pumping Protection Agreement)

1.5 The Zuni Tribe and the United States claim that unrestricted pumping of underground water by other landowners within the Zuni Protection Area (see Attachment 1) is likely to adversely affect the ability of the Zuni Tribe and the United States to pump 1,500 acre-feet per year of underground water from Zuni Pumping Lands for purposes of restoration and maintenance of the Wetland Restoration Project on the Zuni Heaven Reservation.

1.6 Except as otherwise expressly provided in the Settlement Agreement or in this and other Pumping Protection Agreements, the Zuni Tribe and the United States have reserved claims to groundwater rights and claims for damage or injury to surface water and to groundwater rights and to water quality as against persons or entities who pump underground water from lands within the Zuni Protection Area.

1.7 The Zuni Tribe and the United States have agreed to enter into Pumping Protection Agreements with any landowners who wish to voluntarily subject their lands within the Zuni Protection Area to restrictions as to the pumping of underground water, in return for a waiver of any and all claims by the Zuni Tribe and the United States as set forth in this Pumping Protection Agreement.

#### AGREEMENT:

Now, therefore, in consideration of the covenants contained herein, the parties agree as follows:

2.1 This Pumping Protection Agreement, Attachment 1, and the Settlement Agreement (to the extent it is applicable), represent the entire and complete agreement of the Zuni Tribe, the United States, and Landowner with respect to pumping underground water on Landowner's Restricted Lands. This Pumping Protection Agreement must be interpreted and enforced under the laws of the State of Arizona and the United States and must be enforced in the Decree Court.

2.2 Landowner shall not construct or operate on any individual section of Landowner's Restricted Lands new wells or other new devices having a capacity, individually or collectively, to pump more than 500 gallons of water per minute, or a prorated amount if Landowner's Restricted Lands are less than one section of land. This Pumping Protection

Agreement does not limit the ability of Landowner to construct Exempt Wells and replacement wells. Replacement wells must not exceed the capacity of the well being replaced.

2.3 This Pumping Protection Agreement establishes by covenant a perpetual restriction on Landowner's Restricted Lands, which runs with the land, and a corresponding waiver of claims by the Zuni Tribe and the United States against Landowner or any successor-in-interest to Landowner. This Pumping Protection Agreement must be recorded in the records of Apache County, Arizona, to give notice of these restrictions to the public and to any successor-in-interest to Landowner. This Pumping Protection Agreement must also be filed with the Decree Court.

2.4 So long as this Pumping Protection Agreement remains in effect, the Zuni Tribe and the United States shall not assert any claims against Landowner or Landowner's successor-in-interest arising from or in any way related to the pumping of underground water, on Landowner's Restricted Lands, in a quantity that does not exceed the limitations provided in this Pumping Protection Agreement. In addition, the Zuni Tribe and the United States shall not assert any objections to any new well that may be constructed on Landowner's Restricted Lands in conformity with the limitations described in paragraph 2.2.

2.5 This Pumping Protection Agreement does not diminish or otherwise alter or affect in any way the waivers of claims or reservation of rights by the Zuni Tribe and the United States as provided in Article 11 of the Settlement Agreement, or any other waiver, covenant or other provision contained in the Settlement Agreement. Landowner, the Zuni Tribe and the United States are entitled to the benefits of these provisions despite any contrary provision in this Pumping Protection Agreement and whether or not Landowner is in compliance with the provisions of this Pumping Protection Agreement.

2.6 The Zuni Tribe and the United States shall not bring any legal action for breach of this Pumping Protection Agreement against Landowner or Landowner's successor-in-interest without first giving thirty (30) days written notice of the basis of their claim, and an opportunity to cure or correct any condition that is the basis of their claim. Any action for breach must be brought in the Decree Court. If the Decree Court determines that Landowner or Landowner's successor-in-interest has breached this Pumping Protection Agreement by constructing or operating one or more wells in a manner prohibited by this Pumping Protection Agreement, the Zuni Tribe and the United States are entitled to any remedy available, at law or in equity, under state or federal law.

2.7 This Pumping Protection Agreement is enforceable either on the date the Settlement Agreement becomes enforceable, or if signed after that date, then on the date this Pumping Protection Agreement has been signed by all the parties.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Zuni Indian Tribe**

\_\_\_\_\_  
By  
Its

Address:

**The United States of America, as trustee**

\_\_\_\_\_  
By  
Its

*Gale A. Norton*

Address:

**Landowner**

\_\_\_\_\_  
By  
Its

Address: